



Proposed Regulation Agency Background Document

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| Agency name | Board for Asbestos, Lead, Mold, and Home Inspectors |
| Virginia Administrative Code (VAC) citation | 18 VAC 15-30 |
| Regulation title | Lead-Based Paint Activities |
| Action title | Review of the lead-based paint activities qualifications for licensure and renewal. |
| Date this document prepared | May 19, 2011 |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

Amendments are proposed to the qualifications for individual licensure, renewal required, qualifications for renewal, professional responsibility, and grounds for denial of application, denial of renewal, or discipline. This is being done to clarify training requirements upon entry and renewal and to reiterate that training must be kept current as well as the license.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

There are no acronyms used in this Agency Background Document. There are no technical terms used that are not also defined in the "Definition" section of the regulations.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 54.1-501 states that the Board shall promulgate regulations to include but not be limited to the prescription of fees, procedures, and qualifications for the issuance and renewal of lead licenses.

The imperative form of the verb “shall” is used, making the Board's authority to regulate mandatory rather than discretionary.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The Board intends amend its Lead-Based Paint Activities regulations to remove the requirement that the lead license expiration date corresponds with the lead training expiration date. The current result is that lead licenses expiration dates may vary from one license cycle to another causing confusion amongst the regulants population. Most licenses issued under the Department of Professional and Occupational Regulation (DPOR) have a license cycle of one or two years and the expiration date is the last day of the month wherein issued. Amending these regulations will allow the lead program license cycle to be consistent with other programs housed under DPOR. This will in turn lessen the confusion amongst the regulant population.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the “Detail of changes” section.)

18 VAC 15-30-52: Will add a subsection that speaks directly to the training requirement as a qualification for licensure. Will amend the specific entry requirements for each discipline to refer to the newly created subsection.

18 VAC 15-30-164: Will amend by removing the connection between the license expiration date and the training expiration date.

18 VAC 15-30-166: Will amend by emphasizing the validity time period for training and explaining that the training must be discipline specific. Will amend by stating the consequences of not completing training on time or not taking the proper training for the license discipline. Will further amend the requirement that accredited training providers certify their continued compliance with the Virginia regulations every 24 months instead of 48 months to make the regulation consistent with how often providers actually certify their continued compliance.

18 VAC 15-30-790: Will add a subsection that speaks directly to the requirement for a regulant to maintain his or her license and training as current.

18VAC 15-30-810: Will add a subsection that states that a regulant failing to keep his or her license and training current is grounds for denial of an application, denial of renewal or discipline.

Issues

Please identify the issues associated with the proposed regulatory action, including:
1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
3) *other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.

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- 1) The primary advantage to the public is that regulants should better understand that they must keep their training valid in addition to their license. Whereas the license proves minimum competency, the required training teaches the standards for conducting lead-based paint activities as described in the 18 VAC 15-30 and standards adopted by the EPA. A properly trained regulant population would benefit the general public. No disadvantage has been identified.
 - 2) The primary advantage to DPOR and the Commonwealth is an amended regulation that can be administered effectively and is anticipated to provide a reasonable level of public protection with a minimum intrusion into the conduct of commerce. No disadvantage has been identified.
 - 3) The primary advantage to the regulated community and government officials is that training requirements are clarified. No disadvantage has been identified.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

No requirements that exceed applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No particularly affected localities have been identified.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

The agency is seeking comments on the proposed regulation amendment, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail, email or fax to **David Dick, Executive Director, Lead-Based Paint Activities Proposed, DPOR, Perimeter Center, Suite 400, 9960 Mayland Drive, Richmond, VA 23233, ALHI@dpor.virginia.com or (866) 350-5354**. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirements create the anticipated economic impact.

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| <p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</p> | <p>a) NGF (0900)</p> <p>b) No one-time costs are expected as a result of this regulatory change. No ongoing costs are expected as a result of this regulatory change.</p> |
| <p>Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.</p> | <p>No change anticipated.</p> |
| <p>Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.</p> | <p>The revised regulations apply to individuals who are lead-based paint workers, supervisors, inspectors, risk assessors, and project designers or those applying to be licensed as such. The revised regulations also apply to training providers or training provider applicants.</p> |
| <p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p> | <p>There are approximately 951 licensed individuals and 19 accredited training providers.</p> |
| <p>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities.</p> | <p>There is no anticipated additional cost to the regulants.</p> |

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| <p>Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p> | |
| <p>Beneficial impact the regulation is designed to produce.</p> | <p>This regulation is being amended to clarify training requirements upon entry and renewal and to reiterate that training must be kept current as well as the license.</p> |

Summary:

The current Lead-Based Paint Activities Regulations for the Board for Asbestos, Lead, Mold, and Home Inspectors are being revised to clarify training requirements upon entry and renewal of an individual or training provider license. The regulations will reiterate that licenses and related training must be kept current. Amendments are being made to the qualifications for individual licensure and renewal, professional responsibility, grounds for denial of applications or renewals, and discipline. No fiscal impact is expected as a result of these changes.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies. The board has no other source of income.

Fiscal Impact:

| | FY 2011 | FY 2012 | FY2013 | FY2014 |
|----------------------|------------|------------|------------|------------|
| Fund | NGF (0900) | NGF (0900) | NGF (0900) | NGF (0900) |
| Program/Service Area | 560 46 | 560 46 | 560 46 | 560 46 |

| Impact of Regulatory Changes: | | | | |
|-------------------------------|------|------|------|------|
| One-Time Costs | 0 | 0 | 0 | 0 |
| Ongoing Costs | 0 | 0 | 0 | 0 |
| Total Fiscal Impact | 0 | 0 | 0 | 0 |
| FTE | 0.00 | 0.00 | 0.00 | 0.00 |

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

No viable alternatives have been identified.

The Board will seek comment from the public to identify necessary changes and alternatives to the amendments. The Board will evaluate all suggestions and alternatives in arriving at proposed regulation amendments.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The enabling statute mandates that the Board promulgate regulations that protect the public.

- 1) The proposed amendments do not change the current compliance and reporting requirements and are the least stringent consistent with public protection.
- 2) The proposed amendments do not change the established schedules or deadlines for compliance or reporting requirements for individual licensees. The current regulation provisions establish a schedule for training providers to certify that their training program is still in compliance with Virginia regulations and the proposed amendments conform the reporting interval to current practice.
- 3) The current compliance and reporting requirements continue to be the simplest alternative identified.
- 4) The current regulations and the proposed amendments apply to individuals and training providers. Training providers may be small businesses; however, the current regulations and the proposed amendments do not establish a need for performance standards. The proposed amendment formally alters the certification requirement from every 48 months to every 24 months, which is the timeframe training providers have followed since the inception of the Lead-Based Paint Activities Regulations.
- 5) The current regulation and the proposed amendments apply to individuals and training providers. Training providers may be small businesses; however, the proposed amendments do not establish a need for small business exemption. The proposed amendment formally alters the certification requirement from every 48 months to every 24 months, which is the timeframe training providers have followed since the inception of the Lead-Based Paint Activities Regulations.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

No public comment was received.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

No family impact has been identified.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please describe the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

| Current section number | Proposed new section number, if applicable | Current requirement | Proposed change, rationale, and consequences |
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| | 18VAC15-30-52.E | | Subsection added to further explain the existing training requirement, specifically that training is required, the length of time training in valid and how often training must be completed. |
| 18VAC15-30-52.E.1 | 18VAC15-30-52.F.1 | Specific entry requirements for worker. | Amended subsection so that subsection E is referenced when detailing the entry training requirement for worker. This was done for clarification purposes. Housekeeping amendments made as well. |
| 18VAC15-30-52.E.2 | 18VAC15-30-52.F.2 | Specific entry requirements for project designer. | Amended subsection so that subsection E is referenced when detailing the entry |

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| | | | training requirement for project designer. This was done for clarification purposes. Housekeeping amendments made as well. |
| 18VAC15-30-52.E.3 | 18VAC15-30-52.F.3 | Specific entry requirements for supervisor. | Amended subsection so that subsection E is referenced when detailing the entry training requirement for supervisor. This was done for clarification purposes. Housekeeping amendments made as well. |
| 18VAC15-30-52.E.4 | 18VAC15-30-52.F.4 | Specific entry requirements for inspector. | Amended subsection so that subsection E is referenced when detailing the entry training requirement for inspector. This was done for clarification purposes. Housekeeping amendments made as well. |
| 18VAC15-30-52.E.5 | 18VAC15-30-52.F.5 | Specific entry requirements for risk assessor. | Amended subsection so that subsection E is referenced when detailing the entry training requirement for risk assessor. This was done for clarification purposes. Housekeeping amendments made as well. |
| 18VAC15-30-52-F | 18VAC15-30-52-G | Training verification. | No substantive change. Housekeeping amendment to renumber subsection. |
| 18VAC15-30-52-G | 18VAC15-30-52-H | Education verification. | No substantive change. Housekeeping amendment to renumber subsection. |
| 18VAC15-30-52-H | 18VAC15-30-52-I | Experience verification. | No substantive change. Housekeeping amendment to renumber subsection. |
| 18VAC15-30-52-I | 18VAC15-30-52-J | Conviction or guilt. | No substantive change. Housekeeping amendment to renumber subsection. |
| 18VAC15-30-52-J | 18VAC15-30-52-K | Standards of conduct and practice. | No substantive change. Housekeeping amendment to renumber subsection. |
| 18VAC15-30-52-K | 18VAC15-30-52-L | Standing. | No substantive change. Housekeeping amendment to renumber subsection. |
| 18VAC15-30-164.C | N/A | Currently states that licenses expire 12 months from the last day of the month wherein the individual completed training and that in no case shall a license expire later than the last day of the month in which the individual completed training. | Amended the section to remove the tie between the license expiration date and the training expiration date. The license shall now expire 12 months from the last day of the month wherein issued regardless of the training expiration date. This was done to allow a license to be issued for a full 12 months rather than the current based on the training date expiration. |
| 18VAC15-30-166.A.1 | N/A | Currently states that licenses desiring to renew must complete refresher training and that the licensee is responsible for ensuring the board receives proof of completion of the training. | Requirement to complete refresher training remains the same, but the section has been amended for clarification purposes. The requirement that the licensee is responsible for ensuring the board receives proof of training completion has been moved to 18VAC15-30-166.A.2. |
| N/A | 18VAC15-30-166.A.2 | N/A | Adds a section that states the licensee is responsible for ensuring the board receives proof of completion of training prior to the expiration date of the license. This requirement previously found in 18VAC15-30-166.A.1 and is being moved for clarification purposes. |
| N/A | 18VAC15-30- | N/A | Adds a section that states refresher |

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| | 166.A.3 | | training shall be specific to the discipline of license being renewed for clarification purposes. |
| 18VAC15-30-166.A.2 | 18VAC15-30-166.A.4 | Currently states that the board shall renew a license for an additional 12 months upon receipt of the renewal application and fee. Also states that in no case shall a license expire later than the last day of the month the training was complete. | Housekeeping amendment to renumber section. In addition, the board shall renew a license for an additional 12 months upon receipt of the renewal application and fee, however, the tie between the license expiration date and the training expiration date has been removed. This was done to allow a license to be renewed for a full 12 months rather than the current based on the training date expiration. |
| 18VAC15-30-166.C | N/A | Currently states that accredited training providers shall renew every 48 months. | Section is being amended to change the renewal reporting period to every 24 months. This amendment will conform the regulations to the current renewal reporting practice. |
| N/A | 18VAC15-30-790.D | N/A | Adds a subsection that establishes the professional responsibility of a licensee to keep both their training and license current. With the tie between the license expiration date and training expiration date being removed, the board added this to reiterate and clearly state that both training and the license are still required to be current. |
| N/A | 18VAC15-30-810.A.14 | N/A | Adds a subsection that states failing to keep training and license current are ground for application denial, renewal denial or discipline. With the tie between the license expiration date and training expiration date being removed, the board added this to reiterate and clearly state that both training and the license are still required to be current and that failing to do so could result in loss of licensure or discipline or both. |